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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/581,210	06/01/2006	Kenichiro Ota	062485	3740
38834	7590	08/16/2007	EXAMINER	
WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP			KHOSRAVIANI, ARMAN	
1250 CONNECTICUT AVENUE, NW			ART UNIT	PAPER NUMBER
SUITE 700			2809	
WASHINGTON, DC 20036				
MAIL DATE		DELIVERY MODE		
08/16/2007		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/581,210	OTA ET AL.	
	Examiner	Art Unit	
	Arman Khosraviani	2809	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 01 June 2006.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-3 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) Claim(s) _____ is/are allowed.
6) Claim(s) 1-3 is/are rejected.
7) Claim(s) _____ is/are objected to.
8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 01 June 2006 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948) Paper No(s)/Mail Date. ____ .
3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 06/06. 5) Notice of Informal Patent Application
6) Other: ____ .

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following minor informalities:

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
- (f) BACKGROUND OF THE INVENTION.
 - (1) Field of the Invention.
 - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

The sequence of the specification will be made proper by placing BRIEF DESCRIPTION OF THE DRAWING(S) prior to BEST MODE FOR CARRYING OUT THE INVENTION.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Clerc et al. (US 6,190,802).

Regarding claim 1, Clerc disclose (col. 2/lls. 36-62 and col. 3/lls. 23-41) a metal oxynitride electrode catalyst, comprising an oxynitride containing at least one transition metal element selected from the group consisting of La, Ta, Nb, Ti, and Zr.

The limitation “the metal oxynitride electrode catalyst above being used at a potential of 0.4 V or higher relative to the reversible hydrogen electrode potential in an acidic electrolyte.” Is merely functional/intended us limitations that do not structurally distinguish the claimed invention over the prior art. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963). Moreover, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to

be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Regarding claim 2, Clerc disclose (col. 2/lls. 54-67, and col. 3/lls. 1-41) the metal oxynitride electrode catalyst above, wherein the metal oxynitride electrode catalyst (dopants) is dispersed as fine particles on a catalyst carrier which is an electronically conductive powder.

Regarding claim 3, Clerc disclose (col. 6/lls. 14-30 and col. 7/lls. 11-23) the metal oxynitride electrode catalyst is used as an electrode catalyst for fuel cells (e.g. lithium battery cells) using an acidic electrolyte.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Ray (US 4,399,008), Ray et al. (US 4,455,211), Ray et al. (US 4,454,015), Ray (US 4,582,585), Ray et al. (US 4,584,172), Luczak et al. (US 4,677,092), Itoh et al. (US 5,024,905), Kunz (US 5,183,713), Wang (US 5,364,522), Sekhar (US 5,374,342), Sekhar et al. (US 5,378,327), Sekhar et al. (US 5,397,450), Thompson et al. (US 6,297,185), Kourtakis (US 2003/0059666), Yadav (US 2006/0016371) all show devices similar to the instant invention.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arman Khosraviani whose telephone number is 571-

Art Unit: 2809

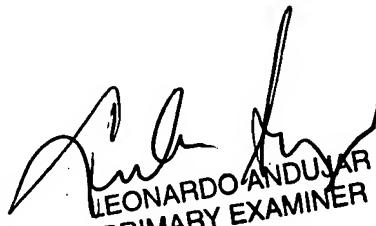
272-2554. The examiner can normally be reached on Monday to Friday, 7:30a - 5:00p (Eastern Time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Ortiz can be reached on 571-272-1206. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Arman Khos.

AK


LEONARDO ANDUJAR
PRIMARY EXAMINER